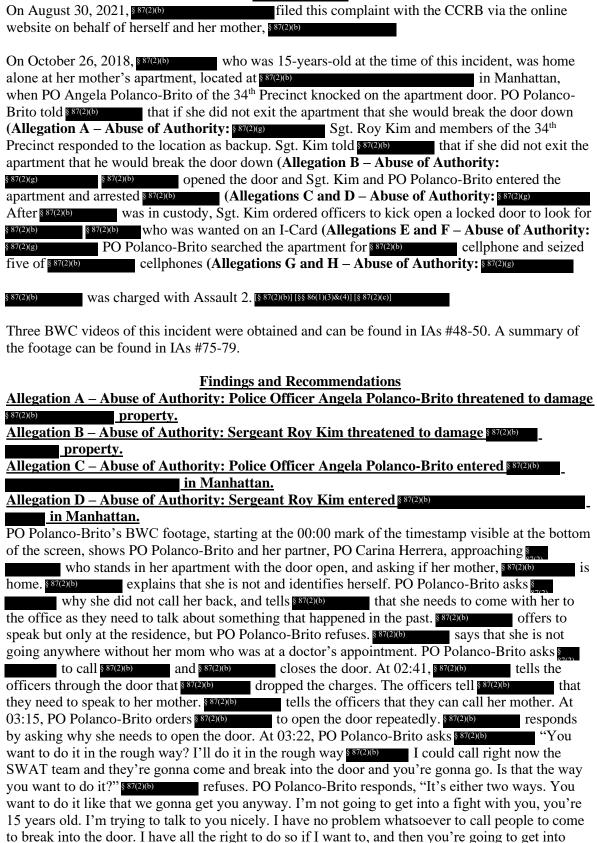
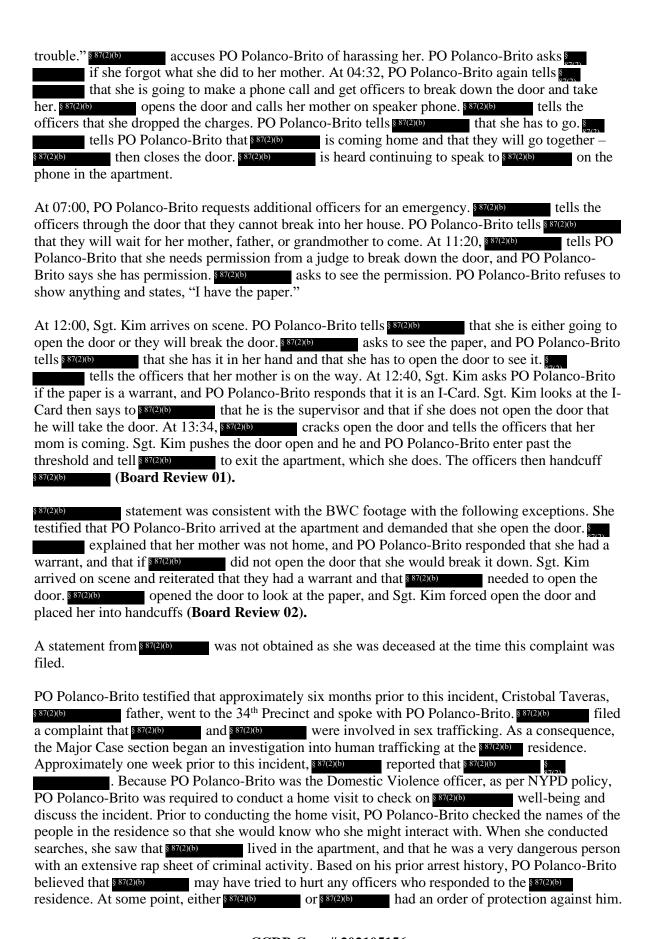
## CCRB INVESTIGATIVE RECOMMENDATION

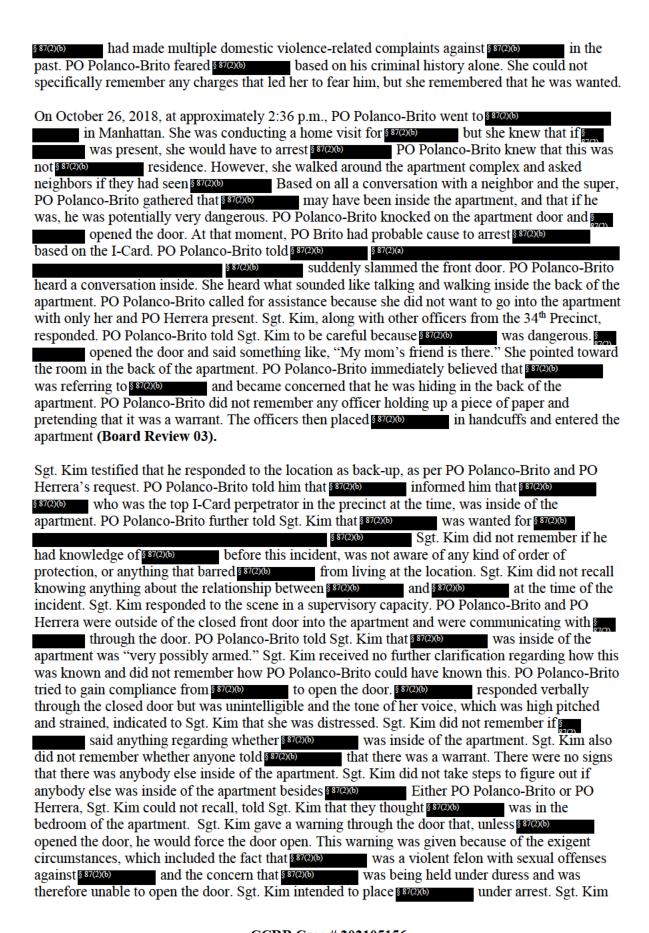
Investigator:		Team:	CCRB Case #:	☐ Force	e [	Discourt.	U.S.
Thomas Juliano		Squad #6	202105156	☑ Abu	se 🗆	] O.L.	☐ Injury
Incident Date(s)		Location of Incident:	-	Precir	ict: 1	8 Mo. SOL	EO SOL
Friday, 10/26/2018 4:00 PM		§ 87(2)(b)		34		4/26/2020	12/11/2020
Date/Time CV Reported		CV Reported At:	How CV Reported	: Date	Time Re	eceived at CCI	RB
Mon, 08/30/2021 12:40 PM		CCRB	On-line website	Mon	, 08/30/2	021 12:40 PN	Л
Complainant/Victim	Type	Home Addre	ess				
Witness(es)		Home Addre	ess				_
Subject Officer(s)	Shield	TaxID	Command				
1. POF Angela Polanco-Brito	04956	939240	WARRSEC				
2. SGT Roy Kim	00000	947132	063 PCT				
Witness Officer(s)	Shield N	o Tax No	Cmd Name				
1. POM Peter Toale	18531	959303	034 PCT				
2. POM Michael Tierney	29669	962841	034 PCT				
3. PO Geoffrey Bartalsky	29486	953667	034 PCT				
4. DT3 Javish Ortiz	04152	933130	040 DET				
5. DT2 John Scozzafava	04231	923148	DB MNHM				
6. PO Carina Herrera	23623	952846	034 PCT				
Officer(s)	Allegatio	n			Investi	gator Recon	nmendation
A.POF Angela Polanco-Brito	Abuse: P	olice Officer Angela Po 87(2)(b) prope		ned to			
B.SGT Roy Kim		ergeant Roy Kim threat property.	ened to damage <sup>§87</sup> €	)(b)			
C.POF Angela Polanco-Brito	Abuse: P	olice Officer Angela Po	olanco-Brito entered in Manha				
D.SGT Roy Kim	Abuse: S § 87(2)(b)	ergeant Roy Kim entere	ed in Manha	ttan.			
E.SGT Roy Kim	Abuse: S property.	ergeant Roy Kim dama	ged § 87(2)(6)				
F.SGT Roy Kim	Abuse: S § 87(2)(b)	ergeant Roy Kim searcl	hed in Manha	ttan.			
G.POF Angela Polanco-Brito	Abuse: P	olice Officer Angela Po	olanco-Brito searche in Manha				
H.POF Angela Polanco-Brito	Abuse: P	olice Officer Angela Po property.	olanco-Brito seized				

## **Case Summary**



CCRB Case # 202105156





did not have time to obtain a warrant and, citing Patrol Guide 217, believed that it was necessary to perform an emergency removal without a warrant and that, as a supervisor, the procedure stated that he could open the door if a minor was in danger. Sgt. Kim did not recall asking \$\frac{87(2)(6)}{87(2)(6)}\$ whether \$\frac{87(2)(6)}{87(2)(6)}\$ was inside of the apartment. \$\frac{87(2)(6)}{87(2)(6)}\$ said that \$\frac{87(2)(6)}{87(2)(6)}\$ was not inside of the apartment. Another officer placed \$\frac{87(2)(6)}{87(2)(6)}\$ was under arrest and was not sure whether he knew that it was because of her I-Card at the time. Sgt. Kim was not sure whether PO Polanco-Brito wanted to arrest \$\frac{87(2)(6)}{87(2)(6)}\$ upon gaining access to the apartment and believed that the primary concern of the officers on the scene was \$\frac{87(2)(6)}{87(2)(6)}\$ safety. Sgt. Kim and PO Polanco-Brito then entered the apartment.

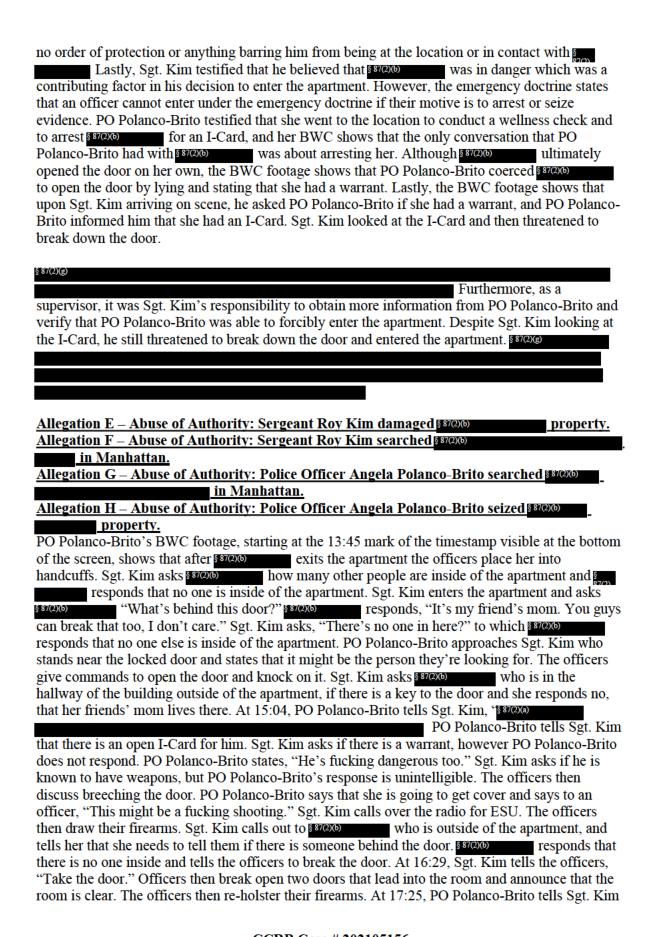
Sgt. Kim was shown PO Polanco-Brito's BWC footage. Sgt. Kim identified the paper at the beginning of the video as [87(2)(5)] I-Card, but this did not refresh Sgt. Kim's recollection of PO Polanco-Brito's intention to arrest her. Sgt. Kim did not believe that the I-Card was a sufficient reason to enter the apartment. Sgt. Kim also recalled the moment in which [87(2)(5)] told the officers that nobody was inside of the apartment. Sgt. Kim believed that [87(2)(5)] was being untruthful based on the information he received from PO Polanco-Brito (Board Review 04).

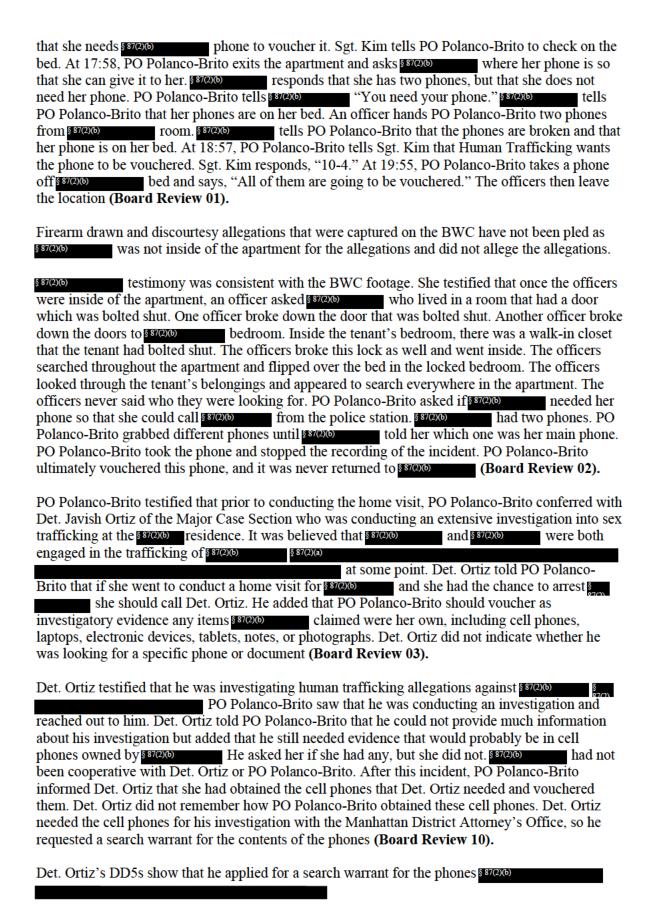
A request for I-Cards for \$87(2)(6) yielded negative results (Board Review 05).

Officers may enter an apartment without a warrant or probable cause where there is voluntary consent to enter. People v. Gonzalez, 39 N.Y.2d 122 (1976) (Board Review 06). Searches and seizures inside a home without a warrant are presumptively unreasonable. There are a few exceptions to entering a premise without a warrant, including consent, exigent circumstances, or emergency situations. The factors for exigency include: 1) the gravity or violent nature of the offense with which the subject is to be charged, 2) whether the subject is reasonably believed to be armed, 3) a clear showing of probable cause to believe the suspect committed the crime, 4) strong reason to believe that the suspect is in the premises being entered, 5) a likelihood that the suspect will escape if not swiftly apprehended, and 6) peaceful circumstances of the entry. People v. McBride, 14 N.Y.3d 440 (2010) (Board Review 07).

Warrantless entries into private homes are considered unconstitutional. Exceptions to this rule include emergency situations: 1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property. 2) The search must not be primarily motivated by intent to arrest and seize evidence. 3) There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched. People v. Dallas, 8 N.Y. 3d 890 (2007) (Board Review 08). When an officer determines that there is an imminent danger to child's life or health, they are to request the response of a patrol supervisor. If the patrol supervisor determines that the child's continued presence presents an imminent danger to the child's life or health, and there is not time to obtain a court order, the patrol supervisor is to remove the child from the home with consent from the child's parent or legal guardian. NYPD Patrol Guide, Procedure 215-03 (Board Review 09).

PO Polanco-Brito testified that upon arriving to the location, that neighbors confirmed that	7(2)
who was dangerous and who had an open I-Card, lived at the location. She further	•
testified that she believed, based on \$87(2)(b) responses, that \$87(2)(b) was inside	
apartment with \$87(2)(b) and presented a threat to her. However, the BWC shows that	(2)
provided no such information that would reasonably lead an officer to conclude that	it §
was inside of the apartment and that despite PO Polanco-Brito's testimony, §87(2)(b)	
spoke with no one besides PO Polanco-Brito and sar(2)(b) on the phone. Furthermore, ev	'en
assuming that \$87(2)(b) was a dangerous individual and was inside of the apartment, the	re was
assuming that §87(2)(b) was a dangerous individual and was inside of the apartment, the	re was





Sgt. Kim testified that while was placed under arrest, Sgt. Kim and officers went into the apartment and walked to a closed bedroom inside of the apartment. Sgt. Kim gave verbal commands outside of the closed bedroom doors, including "open the door," "come out," and "let me see your hands." Sgt. Kim did not recall hearing anything from the closed bedroom door or how many verbal commands he gave. (SSCO) told Sgt. Kim that the officers could kick down the door if they wanted to. Sgt. Kim recalled (SSCOO) saying other things to the officers but she was unintelligible. Sgt. Kim and PO Michael Tierney forced the bedroom door open by kicking it together and walked inside of the bedroom. Sgt. Kim did not find (SSCOO) was inside of the bedroom and did recall much about the bedroom. There was no indication that (SSCOO) was inside of the bedroom and Sgt. Kim did not recall seeing any male clothing, an open window, or any signs that (SSCOO) escaped. PO Polanco-Brito told Sgt. Kim that (SSCOO) had the phones needed to be vouchered as evidence. Sgt. Kim did not recall if (SSCOO) had the phones on her person during the incident. After reviewing PO Polanco-Brito's BWC footage, Sgt. Kim acknowledged that PO Polanco-Brito said that the phones needed to be vouchered when he responded "10-04." In the video, PO Polanco-Brito asks (SSCOO) about where the phones were. Sgt. Kim did not have a recollection of this and did not remember why he did not prevent PO Polanco-Brito from looking for these phones. Sgt. Kim did not know if PO Polanco-Brito had a warrant of any kind (Board Review 04).
The property voucher prepared by PO Polanco-Brito shows that she vouchered five phones as investigatory evidence (Board Review 11).
Police officers may damage property only if doing so is reasonably necessary to carry out their duties. Onderdonk v. State, 648 N.Y.S.2d 214 (1996) (Board Review 12). Searches and seizures inside a home without a warrant are presumptively unreasonable. Absent exigent circumstances, a warrantless entry to search for weapons or contraband is unconstitutional even when a felony has been committed and there is probable cause to believe that incriminating evidence will be found within. Payton v. New York, 445 U.S. 573 (1980) (Board Review 13).
Sgt. Kim testified that PO Polanco-Brito informed him that was inside of the location and that he was wanted on an I-Card, but he stated that he was not aware of an order of protection or anything that barred from being at the location. Once the officers gained entry, Sgt. Kim gave the order to open the bedroom door because he believed that was was at the location. Given that Sgt. Kim testified that was was wanted on an I-Card, and that there was nothing to his knowledge that barred from being at the location, from being at the location,
PO Polanco-Brito testified that prior to this incident, Det. Ortiz of Human Trafficking told her that if she arrested at her home that she should voucher her phones. Det. Ortiz testified that he told PO Polanco-Brito that he needed evidence from phone, and that PO Polanco-Brito later called him and stated that she obtained the phones. It is undisputed that the officers did not have a warrant and entered the location with an I-Card (See Allegations A-D). Had Det. Ortiz asked PO Polanco-Brito to voucher phones as PO Polanco-Brito testified, PO Polanco-Brito should have evaluated the legality of obtaining the phones before searching around the apartment for strong phones. The BWC footage shows that the phones were not

was in custody. Furthermore, the BWC footage shows that \$87(2)(6)

Polanco-Brito that she did not want her phones, and that PO Polanco-Brito told \$87(2)(6)

person when she was arrested, and that PO Polanco-Brito searched the apartment

told PO

that

the apartment	t for § 87(2)(b) phones, w	er the guise of being helpful. PO Po which were not on her person at the ing PO Polanco-Brito that she did	time of arrest,
§ 87(2)(g)			
	Civilian and	l Officer CCRB Histories	
(Boar	is the first CCRB complaint to rd Review 14).	o which \$ 87(2)(6) and \$ 87(2)(6)	have been a party
addit	ional complaints and 46 addit	ber-of-service for 17 years and has ional allegations, of which six have	
§ 87(2)(g)			
C		stantiated allegation of force-peppoliscipline B and the NYPD impose	
С	200818612 involved a sub	stantiated allegation of Discourtes Discipline B and the NYPD impose	
С	Abuse-Retaliatory Summo guilty and was suspended to	antiated allegations of Force-Night ns. The Board assigned charges. P for 32 days and forfeited 20 vacation	O Polanco-Brito pled on days as a result.
С		stantiated allegation of Abuse-reta mand Discipline B and the NYPD	
С	assigned charges. PO Polar vacation days.	stantiated allegation of Discourtes nco-Brito was found guilty at trial	and forfeited three
	ional CCRB complaints and f	rvice for 14 years and has been a sive allegations, none of which have	
	Mediation, Ci	vil, and Criminal Histories	
<ul> <li>As of</li> </ul>		r mediation. : City Office of the Comptroller ha rds this to complaint ( <b>Board Revi</b>	
	)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]		
•			
Squad No.:	06		
Investigator:	_ <u>Inv. Thomas Juliano</u> Signature	<u>Inv. Thomas Juliano</u> Print Title & Name	_08/30/2022 

Squad Leader: \_\_Jessica Pena IM Jessica Peña 9/7/2022

Signature Print Title & Name Date